

BOARD OF SUPERVISORS

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BRUCE GIBSON
SUPERVISOR DISTRICT TWO

November 9, 2007

Tam M. Doduc, Chair
Dorothy Rice, Executive Director
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95814

Dear Ms. Doduc and Ms. Rice:

The purpose of this letter is to express our concerns over the rejection of the San Luis Region's Step 1, Round 2, Proposition 50 grant application. This correspondence is intended to provide initial comments on the State's IRWM rankings in advance of our formal response. We also request to meet next week to discuss these issues.

Although the IRWM plan has regional scope, we focus here on the Los Osos Wastewater Project (LOWWP) and County efforts since the first of this year under the authority of Assembly Bill 2701 (Blakeslee). The troubled and contentious history of the LOWWP stems largely from the cost of compliance with regulatory mandates. Even under optimistic assumptions, the cost of this project will exceed federal EPA affordability standards and result in one of the largest local burdens for a community wastewater project in the nation's history.

The County's program to resolve the Los Osos situation has produced a remarkable turnaround for the community. The \$127 million assessment proposed by the County received an 80% "yes" vote, despite the cost of nearly \$25,000 per typical single family residence. The results of this Proposition 218 vote were ratified November 6th by the Board of Supervisors.

Numerous elderly, low income, disadvantaged and disabled citizens face significant hardship in meeting the assessment and other monthly costs. Our intent for IRWM grants is to specifically target assistance for disadvantaged persons as a component of a larger financial assistance program. We believe that the San Luis Region application also provides a true opportunity for the State to help correct serious water pollution that

is directly impacting a State Marine Reserve and a National Estuary. Our detailed comments follow.

Overview

The scores and written review by SWB and DWR staff are inconsistent with the June 2007 IRWM Grant Program Guidelines (Guidelines) and scoring criteria, as applied to the information contained within the San Luis Region's adopted IRWM Plan.

In our initial review of the State ranking, we identified three areas that did not credit the San Luis plan with an appropriate score. These examples include the following areas:

- ✓ Documentation of Plan Adoption
- ✓ The Plan's Financing Details (and the legal effect of AB 2701)
- ✓ Disadvantaged Communities / Environmental Justice

Clearly, the score for the San Luis Region's IRWM Plan is too low. In addition, rejection at this time lacks consideration of the proactive and extensive efforts of the County of San Luis Obispo on the Los Osos wastewater problem.

Documentation of Plan Adoption

State's Scoring: 1 out of 5

Correct Score: 5 out of 5

Quote from State Review:

"An initial IRWMP was adopted on December 6, 2005. However, since that time that IRWMP was revised to incorporate 3 additional components. The revised IRWMP has not been adopted."

This statement is untrue.

The San Luis Region's IRWM Plan was adopted on December 6, 2005 and the required resolution adopted by the Board of Supervisors also included a work plan for administratively revising the adopted IRWM Plan. The resolution of adoption authorizes the San Luis Obispo County Public Works Director to implement the work plan for revising the IRWM Plan. A letter from the Public Works Director is included in the front of the IRWM Plan indicating that the first task in the work plan for updating the adopted IRWM Plan had been completed. The State's IRWM guidelines do not state that an updated adopted plan needs to be re-adopted: "Was the Plan adopted by August 1, 2007?" The answer is simply yes, and the score is 5 out of 5. Lastly, we sought direction from State staff on several occasions prior to the submittal of the revised plan on these details and received no clear direction either verbally or in the guidelines. We followed local established procedures for the plan revisions and we challenge the State

staff score as subjective and contrary to IRWM program intent that otherwise supports locally driven decision making and collaboration.

The Plan's Financing Details (and the legal effect of AB 2701)

Scoring and Review Details for Financing:

State's Scoring: 3 out of 5

Correct Score: 5 out of 5

Quote from State Review:

"The criterion is less than fully addressed and documentation and/or rationale is incomplete or insufficient. The Applicant relies on an upcoming public vote to approve funding for the Los Osos wastewater project. A discussion of alternative funding, if measure does not pass, was not presented."

We are surprised that the State would be critical of our fiscal approach on the Los Osos wastewater project when we are complying with specific provisions expressed in the language of AB 2701. In addition, after the default of the SRF loan by the LOCSD, the County was specifically told by SWB staff that a new SRF loan would need to be supported by assessments pursuant to Prop 218, which is the intent of AB 2701 and our plan, and which did in fact obtain an 80% "yes" vote. For State staff to speculate on a failed vote is disheartening, but when considering we are following special legislation, the "alternatives" that State staff is now seeking would obviously also require special legislation since a failed Prop 218 vote would have, by the operation of AB 2701, transferred the wastewater authority back to a bankrupt district. In other words, our score was reduced because we did not identify an alternative to AB 2701 – yet the need for the special legislation and County involvement was developed uniquely for the situation and "alternatives" were obviously discussed during the legislative process – as is common with all legislation.

We note that the IRWM Guidelines do not state "discuss alternative funding."

Additionally, our score was apparently reduced for suggesting that the success of some projects in San Luis Region's IRWM Plan required the favorable outcome of legally-required processes and/or grant applications. The flood control levees of Zones 1 and 1A of the County's Flood Control District will certainly need grants to help with long-term solutions required as a result of lost channel capacity – common in many flood control channels throughout the State with riparian habitat – but again a successful Proposition 218 ballot effort in 2006 (with an 89% "yes" vote in that instance) established new funding for flood control maintenance activities under County leadership and local collaboration, avoided the transfer of the facilities to the Department of Water Resources which could have happened pursuant to State statutes at the time, and illustrated local successes which instead have been seemingly used to reduce our IRWM score.

Disadvantaged Communities / Environmental Justice

State's Scoring: 6 out of 10

Correct Scoring: higher

Quote from State Review:

"The criterion is less than fully addressed and documentation and/or rationale are incomplete or insufficient. The IRWMP identifies the DACs in the region. However, the discussion was incomplete. It is stated that San Miguel and Shandon can be qualified as DAC, however, no data was found to support the statements. In addition, the IRWMP less than fully addressed the mechanisms used in development of the plan to ensure participation of DACs. The outreach effort was not discussed."

Clearly, the State's review of details for "Benefits and Impacts" versus "Disadvantaged Communities/Environmental Justice" contradict one-another. The scoring for "Benefits and Impacts" was 4 out of 5 points and included the following quote from the State review:

"... a well presented DAC coverage in the region."

The inconsistency in the points provided between the two plan sections and the review comments of the two sections is further difficult to accept when the Guidelines state "Identify the disadvantaged communities in the Region". The State's review detail explicitly contradicts this criterion by stating that "the IRWM Plan identifies the DACs in the region", but adds "the discussion was incomplete." The data to support our statements that San Miguel and Shandon can be qualified as Disadvantaged Communities is in fact found in Figure 2 of the San Luis Region's submittal for this review question. The scoring should be increased.

Lastly, outreach in the San Luis region includes all communities whether disadvantaged or not and is expressly discussed in the Plan document. The County-wide Water Resource Advisory Committee (WRAC) includes dozens of appointed representatives from all cities, all unincorporated areas and communities, plus agriculture and environmental stakeholders. The WRAC has been successfully addressing regional issues for approximately 50 years as well as inter-regional issues involving Santa Barbara and Monterey Counties.

Conclusion

In order to follow up on this issue, we will be in Northern California next week and would like to meet to discuss the contents and other related issues – providing us a better ability to communicate. Specifically, we would also like to discuss our specific efforts

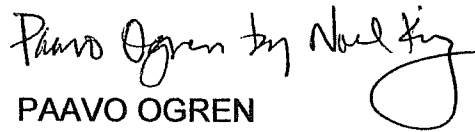
that otherwise are not included in the IRWM plan but known by State staff. For example, our outreach to the State and U.S. EPA staff to investigate the requirements of a State program to allow 30 year repayment plans (as opposed to the existing 20 year plans) in the SRF program, can significantly reduce monthly costs to disadvantaged persons, and could provide a significant state-wide benefit – not a benefit solely for our region. Also, we have previously discussed our legal and fiscal evaluation on how the LOCSD default on the SRF loan might be cured and taking these discussions to the next level is appropriate now that the Proposition 218 vote has passed.

Please advise us as to when a meeting might be arranged. Thank you for the opportunity to comment.

Sincerely yours,



BRUCE GIBSON
Supervisor, District Two
San Luis Obispo County



PAAVO OGREN
Deputy Director
San Luis Obispo County Public Works

cc: Rob Egel, Director, Office of Legislative Affairs
Tom Howard, Chief Deputy Director
Patty Zwarts, Assistant for Legislation, Cal EPA
Assemblyman Sam Blakeslee